

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**SEAN D. MURPHY (a.k.a.
ROBERT SPACER) and
DAVID R. THOMPSON,**

Plaintiffs,

**1:06-CV-00692
(GLS/RFT)**

v.

**EDWARD WATSON, MICHAEL
MILLER, BEST WESTERN
RENSSELAER, and UNNAMED TROY
POLICE OFFICERS,**

Defendants.

BEST WESTERN RENSSELAER,

Cross-Claimant,

v.

**EDWARD WATSON, MICHAEL
MILLER, and UNNAMED TROY
POLICE OFFICERS,**

Cross-Defendants.

**UNNAMED TROY POLICE
OFFICERS,**

Cross-Claimants,

v.

**SEAN D. MURPHY (a.k.a.
ROBERT SPACER) and
DAVID R. THOMPSON,**

Cross-Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFFS:

(Murphy)
Sean D. Murphy
Plaintiff, *Pro Se*
407 Walnut Street
Lynn, Massachusetts 01905

(Thompson)
David R. Thompson
Plaintiff, *Pro Se*
State Prison
807 Cushing Road
Warren, Maine 00787

FOR THE DEFENDANTS:

(Watson, Miller)
OFFICE OF KRIS T. JACKSTADT
P.O. Box 12699
Albany, New York 12212

KRIS T. JACKSTADT, ESQ.

(Best Western Rensselaer)

(No Appearance on Record)

(Unnamed Troy Police Officers)
Office of John W. Bailey
& Associates, P.C.
Pine West Plaza
Suite 507
Albany, New York 12205

NANNETTE R. KELLEHER, ESQ.

Gary L. Sharpe
U.S. District Judge

ORDER

Pro se plaintiffs Murphy and Thompson filed an action, pursuant to 42 U.S.C. § 1983, against several defendants, including unnamed Troy police officers. *See Dkt. No. 1*. Pending is the unnamed officers' motion to dismiss for lack of personal jurisdiction under Federal Rules of Civil Procedure 4(m) and 12(b)(2). *See Dkt. No. 42*. For the following reasons, defendants' motion is granted.

Under the Federal Rules, service of a summons and complaint must be made within 120 days of the commencement of the action. *See* FED. R. CIV. P. 4(m).¹ Moreover, "while it is permissible for a plaintiff who is unaware of the names of putative defendants to name them as John Doe defendants, he must thereafter be diligent in ascertaining their names within the applicable limitation period[.]" *Covington v. Warden of C-95 Detention Ctr.*, 93-CV-1958, 2004 WL 1753284, at *3 (E.D.N.Y. Jan. 21, 2004).

¹The Local Rules of the Northern District of New York further provide that service of process must be completed within 60 days of the filing of the complaint. *See* N.D.N.Y. R. 4.1(b). "This expedited service requirement is necessary to ensure adequate time for pretrial discovery and motion practice." *Id.* "In no event shall service of process be completed after the time specified in Fed. R. Civ. P. 4." *Id.*

In the instant case, the complaint was filed on June 5, 2006. See *Dkt. No. 1*. Despite the passing of the service of process deadline and a further extension of time, the plaintiffs have failed to identify and serve the unnamed defendants. See *Dkt. No. 14, 26*.² Therefore, since service has not been completed, plaintiffs lack personal jurisdiction over the unnamed defendants. Accordingly, defendants motion to dismiss is granted.

WHEREFORE, for the foregoing reasons, it is hereby

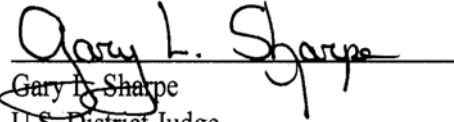
ORDERED, that defendants' motion to dismiss for lack of personal jurisdiction (**Dkt. No. 42**) is **GRANTED**; and it is further

ORDERED, that the complaint (**Dkt. No. 1**) is **DISMISSED** as to the unnamed defendants; and it is further

ORDERED, that the Clerk of the Court provide a copy of this Order to the parties.

IT IS SO ORDERED.

June 20, 2007
Albany, New York



Gary L. Sharpe
U.S. District Judge

²On August 8, 2006, Judge Treece ordered the plaintiffs to take the necessary steps to identify and properly serve the unnamed Troy Police Officers. See *Dkt. No. 14*. On November 21, plaintiffs moved for a 120 day extension of time. See *Dkt. No. 24*. In response, Judge Treece granted the plaintiffs an additional 60 days to name and serve the unnamed defendants. See *Dkt. No. 26*. Judge Treece also informed the plaintiffs that they would not be granted any further extensions. See *id.*